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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,070	12/02/2003	Michael G. Fisher	0003-033P2	2569

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EXAMINER
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HOPKINS, ROBERT A

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/726,070	<b>Applicant(s)</b> FISHER ET AL.	
	<b>Examiner</b> Robert A. Hopkins	<b>Art Unit</b> 1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-18 is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Claim Rejections - 35 USC § 112***

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation "a product", and the claim also recites "a wine product" which is the narrower statement of the range/limitation. Claims 2-9 depend on claim 1 and hence are also rejected.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,8, and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bilkvist(4085975).

Bilkvist teaches a pump for moving a product comprising a vacuum chamber(31) having a product inlet(41), a product outlet(43), a vacuum port(36) and an agitator inlet port(50), a vacuum source(38) coupled to the vacuum port for providing a vacuum to the vacuum chamber whereby product is drawn into the chamber through the product inlet, and a product discharge valve(44) coupled to the product outlet for allowing the product to be removed from the vacuum chamber, and wherein the agitator inlet port is disposed such that an agitating fluid entering the chamber through the agitator inlet port will impinge on the product prior to the product entering the product discharge valve(column 3 lines 26-45). Bilkvist further teaches a regulating valve coupled to the agitator inlet port to control the flow rate of the agitating fluid into the chamber. Bilkvist further teaches wherein the product outlet is disposed near the bottom of the vacuum chamber and the agitator inlet port is disposed adjacent the product outlet.

***Allowable Subject Matter***

Claims 2-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 2 recites "wherein the vacuum source includes an air pump having an intake coupled to the vacuum port and an output coupled to the agitator inlet port. The vacuum source in Bilkvist is not coupled to the agitator inlet port. It would not have been obvious to someone of ordinary skill in the art at the time of the invention to provide a vacuum source which is coupled to the agitator inlet port because Bilkvist does not suggest such a modification. Claims 3-5 depend on claim 2 and hence would also be allowable upon incorporation of claim 2 into claim 1.

Claim 6 recites "further comprising a compressed fluid supply source coupled to the agitator inlet port". Bilkvist teaches an ambient fluid supply and a valve coupled to the agitator inlet port. It would not have been obvious to someone of ordinary skill in the art at the time of the invention to provide a compressed fluid source coupled to the agitator inlet port because Bilkvist does not suggest such a modification. Claim 7 depends on claim 6 and hence would also be allowable upon incorporation of claim 6 into claim 1.

Claims 10-18 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

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Claim 10 includes subject matter which was indicated as allowable in the previous office action. Claims 11-18 depend on claim 10 and hence are also allowed.

***Response to Arguments***

Applicant's arguments filed 4-14-06 have been fully considered but they are not persuasive.

Applicant argues Bilkvist does not suggest substituting a wine product for the dry particulate product. Examiner notes the reasons for allowance given in the previous office action were drawn to claim 19, which depended on claim 10, wherein claim 10 was a process claim and not an apparatus claim. Examiner respectfully submits that the limitations "sufficient to draw a wine" inserted into claim 1 by amendment denote functional limitations and do not provide patentable distinction over Bilkvist, wherein Bilkvist teaches a vacuum source(vacuum pump 38), and therefore meets the limitations of "a vacuum source coupled to said vacuum port for providing a vacuum to said vacuum chamber". Examiner notes that apparatus claims must be patentably distinct from a prior art reference based on the structural limitations of the prior art reference, and not on the material being worked upon by the structure. Claim 1 clearly teaches all of the structural limitations of a "pump for moving a product" in a single reference, Bilkvist, therefore the claim is anticipated.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

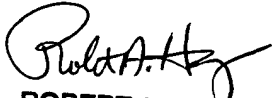
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Hopkins whose telephone number is 571-272-1159. The examiner can normally be reached on Monday-Thursday, 7:30am-6pm, every Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 25, 2006  
Rah

  
ROBERT A. HOPKINS  
PRIMARY EXAMINER  
A.U. 1724